

**In Re: Chotay Lal**

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**Court :** Allahabad

**Decided On :** Jul-27-1931

**Reported in :** AIR1932All83

**Appellant :** In Re: Chotay Lal

**Judgement :**

**Mukerji, J.**

1. This is a reference by the Commissioner of Income-tax made at the instance of one Rai Bahadur Chotay Lal, O.B.E., of Moradabad. It appears that the assessee, Rai Bahadur Lala Chotay Lal, was assessed at an income of Rs. 1,14,546. In determining the tax payable by him he was taken to be a Hindu undivided family and for that reason the first Rs. 25,000 of his income above the first Rs. 50,000, was not charged with any super tax. The assessment was to the best of the judgment of the Income-tax Officer under Section 23(4), Income-tax Act. The assessee, thereupon wanted to have the matter reviewed and he made an application under Section 27 in which he stated that he was an individual and not the head of an undivided family. The Income-tax Officer thereby found out his mistake for not charging any super tax on a sum of Rs. 25,000.

2. The Income-tax Officer on 12th March 1930 issued a notice under Section 34, Income. tax Act read with Section 58, and asked for a fresh return. The assessee made a return and stated that his income was Rs. 85,000 odd. The Income-tax

Officer being of opinion that the last assessment could not be reopened rejected the return and determined the super tax payable on the sum of Rs. 25,000 over which no super tax had been calculated. There was an appeal and subsequently there was an application to the Commissioner of Income-tax for the reference.

3. The Commissioner has framed the following questions for our determination:

(i) Where an assessment of super tax has been completed as if the assessee were a Hindu undivided family, and it is subsequently held that the assessee is an individual, may the Income-tax Officer proceed under Section 34 with a view to assessing to super tax the Rs. 25,000 of income which has escaped that form of taxation?

(ii) In the circumstances stated in question (1) and where the original assessment was, in the absence of a return, made under Section 23(4) and the assessee in answer to the notice under Sections 22(2) and 34, files a return disclosing a lesser income than that taken in the original assessment should the Income-tax Officer reopen the assessment and determine the assessee's income de novo, or should he confine himself to the assessment to super tax of that portion of the income as determined in the original assessment which has escaped taxation?

(iii) In the circumstances stated in questions (1) and (ii) has the filing of the return in answer to the notice under Sections 22(2) and 34 the effect of curing the default for which the original assessment was made under Section 23(4) and should the whole assessment thereupon be treated as one made under Section 23(3)?

4. The first question is an important one and is whether Section 34 is applicable to the circumstances of this case.

5. The Commissioner of Income-tax is of opinion that Rs. 25,000 was chargeable to super tax and has 'escaped assessment.' It has been argued very eloquently on behalf of the assessee that this interpretation by the Income-tax Department is wrong and that no portion of the income of the assessee has 'escaped assessment.'

6. The argument of the learned Counsel is based on the meaning of the words 'assess' and 'assessment,' and he points out that the words 'assess' and 'assessment' have been used in Section 23 of the Act in the sense of

finding out the total income of an assessee, such income being liable to be taxed.

7. We have consulted Murray's English Dictionary and we find that the words 'assess' and 'assessment' have two meanings. The word 'assess' means:

(1) To settle, determine, or fix the amount (taxation, or fine, etc..) to be paid by a person....

(2) To estimate officially the value of (property or income) for the purpose of apportioning its share of taxation.

8. Similarly 'assessment' has got two meanings corresponding to the two meanings quoted above of the word 'assess.'

9. The words 'assess' and 'assessment' being capable of being read in two senses we ought to expect that the Income-tax Act has used the words 'assessment' and 'assess' in the same sense throughout. In Section 23, Sub-section (1) the words are:

If the Income-tax Officer is satisfied that a return made under Section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

10. The word 'assess' here has been used in the sense of finding out the total income of the assessee for the purpose of taxation. Again, in Sub-section (3), Section 23, the following words appear : 'assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.' Evidently the words 'assess' and 'assessment' have been used in the same sense, namely, to determine the amount on which the tax is payable. Lastly in Sub-section (4) there is the following expression 'shall make the assessment to the best of his Judgment.' Here also the word 'assessment' has been used in the sense of finding out the income, of the assessee which may be liable to be taxed.

11. If we apply the meaning of the words 'assess' and 'assessment' which has been applied to Section 23, we shall find that no portion of the income of Lala Ghotay Lal has escaped assessment within the meaning of Section 34, Income-tax Act. In other words, it cannot be said that any portion of the income of Lala Chotay Lal was not discovered as income liable to be taxed. In this view the ground on which the assessee was taxed again cannot hold water.

12. There is however another clause in Section 34, which, in our opinion, is applicable and it is this : 'Or has been assessed at too low a rate.'

13. The scheme of the Indian Finance Act of 1929 shows that in assessing super tax, the income of the assessee is to be taken in two lots of Rs. 50,000. We have nothing to do with a company which comes under Clause (1), Part 2, Schedule 2. As regards individuals or families etc, it is stated that the rate to be charged is 'nil,' in respect of every Hindu undivided family 'in respect of the first Rs. 25,000 of the excess.' The 'rate' is mentioned there, although its amount is 'nil.' In properly calculating the super tax, the officer concerned will take, in the case of a Hindu undivided family, the first Rs. 25,000 in excess of the first Rs. 50,000 of the income, and calculate the rate of tax at the rate 'nil.' Then he will take the next Rs. 25,000 and will calculate the tax at one anna in the rupee and beyond the lots of Rs. 50,000 at the rate of 1 1/2 annas in the rupee.

14. Thus calculating the amount of the income-tax, the rate to be applied to the first Rs. 25,000 over the first Rs. 50,000 of the income-tax was 'nil.' In this I view we can easily say that, not only within the spirit but within the letter of the words of Section 34, Income-tax Act, a sum of Rs. 25,000 has been assessed 'at too low a rate.' We are therefore of opinion that the tax has been levied according to law. This is our answer to the first question.

15. The second question is whether the previous assessment can be re-opened when a notice under Section 34 is issued. This question although formulated before the Commissioner of Income-tax has not been pressed before us in view of a decision of this Court in *In re Kashinath Bagla of Aligarh Dist* : AIR1932 All1 where it was held that it was not open to the assessee to re-open the assessment.

16. The third question has also not been pressed. It is whether the issue of a fresh notice under Section 34 does away with the previous assessment under Section 23(4), Income-tax Act. The answer is obviously in the negative. 'When it has been held that the previous assessment cannot be re-opened the fact that a fresh notice has been issued for the determination of the amount which has escaped assessment or has been assessed at too low a rate, it is not open to the assessee to say that the whole assessment should be reconsidered. We direct that a copy of this judgment be sent to the Commissioner of Income-tax under the seal of the Court and that the assessee do pay costs of this assessment to the Crown. The fees payable to the Government Advocate are assessed at Rs. 150. and he will certify payment, during the usual period allowed to him.

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